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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 401

UNITED STATES OF AMERICA,
Petitioner,

vs.

WILLIAM M. BUTLER, ET AL., RECEIVERS OF HOOSAC MILLS CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF AMICUS CURIAE.

O. O. HAGA,
Counsel for Farmers National Grain Corporation, as amicus curiae.

THE DUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for Farmers National Grain Corporation, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae.*

O. O. HAGA,
Counsel for Farmers National Grain Corporation.

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WILLIAM M. BUTLER ET AL. RECEIVERS OF HOOSAC MILLS CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST DISTRICT.

BRIEF OF FARMERS NATIONAL GRAIN CORPORATION, AS AMICUS CURIAE.

PRELIMINARY STATEMENT.

Farmers National Grain Corporation is the national grain marketing cooperative organized to operate as such under the Agricultural Marketing Act of June 15, 1929. It has in its membership some 23 regional and state cooperatives and some 2,500 local country elevators, and it is esti-

mated that some 300,000 producers use its services in marketing cooperatively.

As was stated in 1933 by the Circuit Court of Appeals for the Seventh Circuit, in a case in which the Board of Trade of the City of Chicago unsuccessfully attacked the cooperative status of Farmers National Grain Corporation:

> "Farmers National is a Delaware corporation, organized and licensed to do business in Illinois. Its charter provides that only cooperative associations dealing in cash grain, and which comply with the requirements of the Capper-Volstead Act (7 U. S. C. Sections 291, 292 (7 U. S. C. A. Sections 291, 292)), may hold its stock, and that individuals may not be stockholders. Its by-laws restrain it from dealing in the products of nonstockholders to an amount greater in value than such as are handled by it for stockholders; and they specify that dividends on its stock shall not exceed 8 per cent of its par value, and that net profits beyond dividends or for establishing a reserve shall be distributed among its stockholders upon a patronage basis. The charter of Farmers National empowers it to deal generally in grain, by itself or through subsidiaries, and to act as agent or broker for others. * * *
>
> It is fairly to be gathered from the record that the stockholders of Farmers National are all cooperative associations of producers, of which Farmers National is the duly authorized representative or marketing agency, and is lawfully entitled to invoke in its own name, but for the sole benefit of its constituent cooperatives, such relief as the constituents might jointly or severally have invoked on their own behalf, though probably not so effectively as could this single or common marketing agency or representative acting on behalf of many associations.
>
> The Federal Farm Board, constituted by the Agricultural Marketing Act to administer its functions, and by it granted broad powers, including that of loaning public money to cooperative associations (7 U. S. C. Section 521 *et seq.* (see 12 U. S. C. A. Sec. 1141 *et seq.*)), evidently recognized Farmers National as a lawful and proper agency for carrying out the purposes of the act by advancing to it many millions of dollars

of public funds wherewith it might carry on upon a scale so large that an aggregation of numerous individual cooperatives must have been in contemplation."

(*Board of Trade of City of Chicago* v. *Wallace*, 67 Fed. (2nd) 402, 403, 404, 405.)

Farmers National Grain Corporation is nonpartisan in that its producer members belong to all political parties and no attempt has ever been made to count noses in this regard, and of course there has been no discrimination as to membership because of political affiliation. Further, the Corporation has been recognized as the national grain cooperative from its inception, first by the Hoover administration, and second by the present Roosevelt administration—in the first case by loans from the old Federal Farm Board, functioning under the Agricultural Marketing Act, and in the second case by loans from the Farm Credit Administration, functioning under the Agricultural Marketing Act, as amended.

Farmers National Grain Corporation therefore thinks that it may fairly speak for the grain producers of the United States who market cooperatively. Speaking for them, it desires to express to this Court the conviction that efforts in the direction of improving the national agricultural situation through cooperative marketing must be supplemented by production control, and that an adequate and proper method of such control is to be found in the Agricultural Adjustment Administration under attack in this cause.

Because of the vital interest of the some 300,000 producers affiliated with Farmers National Grain Corporation it feels justified in imposing upon the time of the Court for consideration of this brief.

ARGUMENT.

Farmers National Grain Corporation joins and concurs in all respects in the brief filed in this cause on behalf of the United States of America.

For this reason any protracted legal analysis of points covered in the brief for the United States would only be unnecessary duplication. However, Farmers National Grain Corporation would again like briefly to direct the attention of the Court to the factual situation which makes the Agricultural Adjustment Act legislation within the province of Congress under the General Welfare clause of the Constitution.

The agricultural plant was greatly expanded during the World War, both because of the profitable demand for agricultural commodities and because of the appeal made to farmers to produce at the maximum because "food will win the War." Since agriculture was unable to adjust its output to the lessened demand following the close of the War it was unable to share in the prosperity which followed. Burdensome surpluses piled up throughout the country to the distress of producers and their creditors. Prices on agricultural commodities declined steadily and to such an extent that some crops had no market value whatever at the point of production. Harvesting, handling and transportation costs were greater than the value of the commodities in central markets. Some crops rotted in the fields, and others wasted after being gathered. During this period agriculture maintained itself only at the expense of its capital structure. It could not buy the products of industry nor pay even the interest upon its capital debt. The tariffs behind which industry maintained its prices through

adjusted production and organized selling were of little or no value to agriculture.

The Congress recognized this situation and in 1929, under the Hoover administration, passed the Agricultural Marketing Act and provided for a Federal Farm Board. Charged with responsibility for establishing and maintaining fair agricultural prices and faced with such a condition, the Federal Farm Board attempted to induce farmers, by voluntary action, to reduce their production. On August 12, 1931 the Farm Board sent a telegram to Governors of certain cotton states, urging the plow-up of cotton, and gave the following release to the press:

> Release morning newspapers,
> Thursday, August 13, 1931.
> 8-12-31.
>
> The Federal Farm Board today (August 12), sent to the Governors of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas, the following telegram:
>
> "Government cotton report of fifteen million five hundred eighty-four thousand bales if realized provides total crop and carryover supply of American cotton of more than twenty-four and one-half million bales against probable world consumption of American cotton this fiscal year of thirteen million or possibly fourteen million bales leaving probable carryover one year hence of around eleven million bales Stop This condition occurs in spite of ten per cent reduction in acreage last spring Stop It has already resulted in drastic declines in cotton prices which if allowed to continue may bring direct disaster to cotton producing states and indirect distress to the nation Stop Through serious world depression of last two years Federal Farm Board has steadfastly attempted to protect cotton farmers and all who deal with them from price declines such as have affected all industries first by sixteen cent loans to cotton cooperatives second by removal from market by Cotton Stabilization Corporation of thirteen hundred thousand bails third by ninety per cent loans to cooperatives last year Stop These ef-

forts had some measure of success but have been outweighed by continual excess production and continually increasing surplus Stop Board believes that time has now come when cotton producers themselves must be called upon for immediate and drastic action Stop Agricultural Marketing Act Section One Paragraph Four directs Board to aid quote in preventing and controlling surpluses and in orderly marketing and distribution so as to prevent such surpluses from causing undue or excess fluctuations or depressions in price for the commodity unquote Stop Section Five Paragraph Four quote the Board is authorized and directed to investigate conditions of overproduction agricultural commodities and advise as to the prevention of such overproduction unquote Stop In line with above mandate from Congress and in view existing situation Board suggests that you immediately mobilize every interested and available agency in your state including farmers bankers merchants landowners and all agricultural educational forces to induce immediate plowing under of every third row of cotton now growing Stop Without question at present low prices there will be considerable abandonment late in the season but this will not improve prices during heavy marketing Stop Problem to be solved is to secure abandonment in an organized and orderly fashion which will give farmers a better return on the remainder Stop Board is convinced that such organized reduction immediately done will be more than repaid by increased price received by growers on this and future crops entirely aside from savings by reason of no picking and ginning costs on that part of crop plowed under Stop Board recognizes that this suggestion calls for drastic remedy for serious emergency but commends to you the thought that major operation of this kind rather than attempts at lesser measures is now needed Stop Board earnestly hopes this proposal which is being sent Governors of all cotton producing states will be approved by you and the people of the South and that necessary steps will be immediately taken to put it into effect on basis which will begin reduction throughout South not later than September first and complete program not later than September fifteenth Stop If the ten largest cotton producing states accept and carry out this program this Board will do all in its

power to support the program and will pledge itself to permit no sales by the Cotton Stabilization Corporation of its present holdings before July thirty-first nineteen thirty-two and will urge upon the cotton cooperatives financed by the Board the desirability of similar action by them on their stocks of nineteen thirty cotton now held Stop This program if fully carried out by Southern farmers as well as by ourselves will mean reduction of total supply by at least four million bales and withholding from this years market of three million bales more Stop You will appreciate necessity for very prompt action if this plan is to effectively benefit farmers this Fall and you are therefore urged to immediately advise us your attitude toward cooperation on it Stop Board will promptly convey to you reactions from other States as received.

FEDERAL FARM BOARD,
JAMES C. STONE,
Chairman."

Alexander Legge, first Chairman of the Federal Farm Board, and Arthur M. Hyde, Secretary of Agriculture, had theretofore made a tour of the wheat states, urging producers to cut their acreage. Both of these Farm Board proposals failed for lack of a practical governmental device for bringing about such adjustment.

The Agricultural Adjustment Act is a mechanism which makes possible this necessary adjustment of production to potential profitable demand throughout the United States in connection with major crops.

The right of Congress to levy customs is unquestioned, even though no revenue may result, or even though losses to the government may occur through the maintenance of machinery for collecting customs on commodities which cannot move over the tariff wall.

The Agricultural Adjustment Act produces revenue. An additional step, appropriation of funds, is necessary to

make the Act effective as a farm tariff. Through this farmers are for the first time provided with a tariff equally effective with the tariffs provided industry, and are given a practical means of adjusting their output in reasonable relation to demand. With the Agricultural Adjustment Act in effect the decline in agriculture has been checked and agricultural recovery seems now soundly under way. The first and strongest impulse toward general economic recovery and re-employment arises from renewed agricultural purchasing power. The immediate and long-time economic and social interests of the whole people depend substantially upon the inclusion of agriculture in the general protective system which has been adopted by the United States, through a practical and effective device which is the protective equivalent of the more usual forms of tariffs. The Agricultural Adjustment Act is such a device.

It is submitted that the taxes under attack in this cause are valid and that the decision below here under review should be reversed.

Respectfully submitted,

O. O. HAGA,

Counsel for Farmers National Grain Corporation, as amicus curiae.

November, 1935.